SPECIAL CIVIL APPLICATION NO. 1068 OF 1995

Date of decision: 14.3.96

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgment?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India,1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Coram: S. K. KESHOTE,J
(14.3.96)

Mr. M. B. Gandhi for the petitioners.

C.A.V. JUDGMENT:

Heard the learned counsel for the parties. The petitioners have filed this writ petition under Articles 226 and 227 of the Constitution of India praying therein for quashing and setting aside the order passed by the Gujarat State Cooperative Tribunal dated 15-12-1994 in revision application No.1 of 1994. Petitioner No.1 is a cooperative society registered under the provisions of the Gujarat State Cooperative Societies Act, 1961. PetitionerNo.2 is the Chairman of the Society and petitioner No.3 is its Secretary. This writ petition has been filed on behalf of the Society by the Secretary Shri M. J. Prem.

2. The facts which are necessary for disposal of this writ petition, briefly stated, are as follows:

Respondents No.1 to 8 are the members of petitioner No.1 Society. There are 16 members in the Society. It is the case of the petitioners that vide resolution dated 12-1-1992 a plot of the society admeasuring 400 sq.yds. was let out to Shri Prasanjit Madhupkumar Prem on fixed monthly rent of Rs.200/-. Prasanjit Madhupkumar Prem is undisputedly son of the Secretary Shri M.J. Prem who is also a practising advocate. It is not the case of the Society that in the meeting in which the Committee has resolved to let out the said plot Shri M.J. Prem had not participated. In view of this fact it is a case where the Secretary of the Society has participated in the deliberation of the Committee where benefits were being given to his own son.

3. Respondents No.1 to 8 submitted that the extract of the resolution dated 12-1-1992 has been produced, but the exact details of the signatures of the members present in the meeting were not given. The very fact that the Society and its Secretary has filed this writ petition against eight members goes to show that there is no majority voice for the action taken by the Society's Secretary. The respondents haver further contended that the Secretary of the Society is a practising advocate, who has behaved in such a way to appear that he was doing everything in accordance with law. Advertisement for letting out the plot was given, but ultimately it was the intention of Secretary of the Society to give the common plot on lease to his own son Prasanjit Madhupkumar Prem. The respondents smelt evil design of the petitioner society's Secretary and therefore they filed lavad case No.372 of 1992 challenging the action of the Society of letting out the common plot. It was in fact the action of the Secretary and not that of the Society. In the lavad case permanent injunction was also prayed for. The

Board of Nominee was however pleased to grant injunction restraining the petitioners, their agents, servants, relatives and legal heirs from carrying on any construction activity on the common plot. At the same time the Board of Nominee granted the application for Commissioner's report. On21-2-1992 the Commissioner of the Court conducted inspection of the site and prepared panchnama in which it was found that some excavation had taken place, but no construction was carried out.

3. In spite of the injunction order, as per the respondents, the petitioners continued the process of making construction and therefore the respondents were compelled to make another application for appointment of Court Commissioner. Second panchnama was taken on 24-2-1992 in which it was stated that the common plot was not in its earlier position as it was on21-2-1992 and there was construction in the common plot. The respondents, however, contended that resolution dated 12-7-82 was not passed at any point of time. The petitioners brought on record only the extract and not the original proceedings. On issue of notice the petitioners came up with defence in the lavad case that third party has carried on the construction. On this defence, the Board of Nominee has vacated the injunction order. In view of this defence it became necessary for respondents No.1 to 8 to amend the suit. The respondents filed application for amending the suit. In the application Exh.58, the respondents No.1 to 8 made threefold prayers, namely, (1) Prasanjit Madhupkumar Prem be joined as a party defendant; (2) Resolution dated 12-1-1992 of the Society be declared bad, illegal and unauthorised and hence be quashed; and (3) the unauthorised construction be demolished. This application filed by the respondents was opposed by the petitioners.In the reply to the application the petitioners took the defence stating that Prasanjit Madhupkumar Prem had filed H. R. P. Suit No.430 of 1992 in the Small Causes Court in which stay was granted restraining the Society and its members from interfering interfere with use of the land and the activities carried on by the said person. So far as this fact is concerned, now the respondents have come up with the case that the aforesaid suit has already been withdrawn by Prasenjit Madhupkumar Prem. Plea of suppression of facts has also been taken.

4. The Board of Nominee decided the application of respondents No.1 to 8 vide order dated 8-12-1993. Out of the three prayers, the Board of Nominee has accepted only one prayer of respondents No.1 to 8, i.e., the prayer of joining Prasenjit Madhupkumar Prem as party defendant. Rest of the prayers were rejected. It is necessary to mention

here that P.M.Prem has not challenged the order dated 8-12-1993. On the other hand the Secretary of the Society who is none other than father of the tenant filed revision application No.1/94 before the Gujarat State Cooperative Tribunal under section 150(g) of the Gujarat Cooperative Societies Act,1961. The revision application filed by the petitioners has been decided by the Tribunal vide its order dated 15-12-1994, which is impugned in the present petition.

5. The revision application has been dismissed. The Tribunal passed order granting the application of respondents No.1 to 8 (Exh.5) for amendment of the suit That is, the two other prayers, which were declined by the Board of Nominees, have been granted by the Tribunal. The learned counsel for the petitioner contended that P.M.Prem could not have been joined as party to the proceedings as he is a third party. Learned counsel for the petitioner has referred to the decision of this Court in the case of Rasiklal Patel vs. Kailasgauri Ramanlal Mehta, reported in 12 GLR 355, wherein clause (c) of subsection (1) of section 96 has been declared to be ultra vires Article 14 of the Constitution of India. It has next been contended that the provisions of Order 41 Rule 33 of the Code of Civil Procedure have wrongly been pressed in service by the Tribunal, to give relief to respondents No.1 to 8 against the order of the Board of Nominee under which the two other prayers made in the application Exh.5 were declined, without filing any application by them before the Tribunal. The provisions of Order 41 Rule 33 would have been applicable by resorting to proviso to subsection (12) of section 150 where the Tribunal was hearing appeal and not in revision petition. In absence of any revision filed by respondents No.1 to 8 against part of the order of the Board of Nominee, the Tribunal has no jurisdiction whatsoever to extend any favour to them. On the other hand the learned counsel for the respondents has argued that P. M. Prem has rightly been impleaded as party to lavad suit. Though Order 41 Rule 33 of Code of Civil Procedure may not be applicable to the Tribunal in hearing revision petition, nevertheless Regulation 27 of the Gujarat Cooperative Tribunal Regulations 1964 clearly attracted in the present case and the order which has been passed by the Tribunal is perfectly legal and justified. The source of power to pass order which has been passed by the Tribunal in the present case is clearly amenable to the provisions of Regulation 27. In view of the provisions of Regulation 27, the Tribunal could have passed appropriate orders though respondents No.1 to 8 have not filed revision application. Referring to the provisions of subsection (9) of section 150, learned counsel for respondents No.1 to 8 contended that the Tribunal could have exercised suo moto powers to grant relief to them while

deciding the revision petition filed by the petitioners. Suo moto revisional power is available to the Tribunal. So far as the grievance of the petitioner regarding impleading of P.M.Prem is concerned, learned counsel for respondents No.1 to 8 contended that this challenge is not permissible to the petitioners. It has next been contended that P.M. Prem has not felt aggrieved by this order. Lastly the counsel for respondents No.1 to 8 contended that under subsection (3) of section 99 of the Act, the Board of nominee has powers to order to implead P.M.Prem as defendant in lavad case.

6. In the writ petition though the petitioners prayed for writ of mandamus, declaring provisions of section 99(3)(a) of the Act as ultra vires the Constitution, that has not been pressed during the course of arguments. Learned counsel for the petitioner has not advanced any argument on this question.

7. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. The plot in question has been let out to P.M. Prem. It is the case where after third party interest has been created therein the petitioners have filed the suit, and any order passed therein may possibly affect the right of that person. It is not in dispute that the suit is maintainable against the Society, its Chairman and the Secretary. When respondents No.1 to 8 have raised controversy in the suit that the plot which has been reserved for common use by the Society could not have been let out, and when suit on this controversy is clearly maintainable against the Society, its Chairman and Secretary, then the presence of P.M.Prem was necessary. On the other hand he was a necessary party to the suit because he is the person who is claiming interest in the Society's property or his interests have been created in the Society's property, and in the eventuality of the Court reaching to the conclusion that the action of the Society to let out its property to him was illegal, his interests are likely to be affected. Such a decision will be against the principles of natural justice, and may not have binding effect on the ground that he was not a party. To met out such contingencies and difficulties as well as to give effect to the judgments rendered by the Board of nominees, the legislature has taken care of the same by enacting the provisions as contained in clause(a) of sub section (3) of section 99 in the Act. Clause (a) of subsection (3) of section 99 of the Act empowers the Board of Nominees, on their satisfaction that a person who may not be a member of the Society has acquired any interest in the property of a person who is a party to the dispute, may be joined as party to the dispute. It has further been

provided that any decision that may be taken on the reference by the Registrar's Board of Nominee shall be binding to the party so joined in the same manner as if he was original party to the dispute. Reference may be made to clause (c) of subsection (3) of section 99 of the Act which gives wide powers to the Board of Nominees in the matter of impleading of parties. The Board of Nominee is armed with power that at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to be just, that the name of any person who ought to have been joined whether as plaintiff or defendant or whose presence before it may be necessary in order to enable it effectively and completely to adjudicate upon and settle all the question involved in the dispute, be added.

8. Though the petitioner has challenged the legality and validity of the provisions of clause(a) of subsection (3) of section 99 of the Act in this writ petition, but not pressed, there is no challenge to the provisions of clause (c) of subsection (3) of section 99 of the Act. Looking to the fact that P.M.Prem is the person who has acquired some interest in the said property, and to the prayer which has been made in the suit, he was certainly a necessary party, and the Board of Nominee has not committed any error whatsoever in ordering him to be added as defendant to the suit. Otherwise also any decision given in the suit in absence of P.M.Prem would have been of no consequence, as it would not have been a binding decision. Consequently it would have been a decision given against P.M.Prem without impleading the party and would have been a nullity, being a decision given in violation of the principles of natural justice. To adjudicate upon and settle the questions which are involved in the suit factually and completely presence of P.M.Prem was necessary. In view of these facts and circumstances, as well as the position of law, I am satisfied that the order of the Board of Nominee impleading P.M.Prem as party to the suit is perfectly legal and justified. The Tribunal has not committed any error whatsoever which warrants interference by this Court in confirming the aforesaid order of the Board of Nominee.

9. Now I may advert to the contention of the learned counsel for the petitioner that in absence of the challenge by respondents No. 1 to 8 to the order of the Board of Nominee declining two prayers, the Tribunal has no jurisdiction to grant the same. Before proceeding further on this question, I consider it proper to refer to the fact that the Board of Nominee, while declining two other prayers, after accepting the prayer to implead P.M.Prem as party, has not considered the fact that the two other prayers were very material and relevant to the prayer which

has been accepted. In fact without allowing two other prayers, acceptance of one prayer is of no value and substance. When the Board of Nominee has considered the presence of P.M.Prem necessary to adjudicate upon effectively and complete the questions involved in the dispute, then those other prayers were to be accepted which are being consequential prayers. Interest in the Society's property has been created in favour of P.M.Prem under resolution of the Society dated 12-1-1992. When the defence of the petitioner was that under the said resolution interest has been created in favour of the tenant, the validity of the same has to be gone into and it was necessary that the respondents also had to challenge the said resolution. In view of these facts the prayers made by way of amendment that the resolution be declared bad and illegal and unauthorised should have been accepted.

10. It is true that the respondents have not filed revision petition against the order of the Board of Nominee whereby the two prayers made in the amendment application have been declined. But it is apparent from the provisions of section 150(9) of the Act, that the Tribunal has powers of suo moto revision. Looking to the facts of the case I do not find any illegality in exercise of those powers in the present case. The Tribunal has passed just and reasonable order which does not call for intereference.

11. In the result the writ petition fails and the same is dismissed. No order as to costs.

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